



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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## HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

**May 22, 2017**

### **Attendance:**

Board Members: Ricky Bauer, Chair  
Mickey Day, Vice Chair  
Jamie Brown  
Howie Feaga  
Ann Jones  
Savannah Kaiss  
Denny Patrick

Elected Officials: The Honorable Mary Kay Sigaty, Howard County Councilmember for District 4

Public: Keith Ohlinger, Howard Soil Conservation District Board

Nancy Emory, Elm Lee Farm  
Brenda Fleming-Warner, Elm Lee Farm  
Darrell Fleming, Elm Lee Farm  
Lee Fleming, Elm Lee Farm  
Stephen Fleming, Elm Lee Farm  
Teresa Stonesifer, Triple Creek Farm

Staff: Amy Gowan, Deputy Director, Department of Planning & Zoning  
Beth Burgess, Resource Conservation Division Chief  
Joy Levy, Administrator, Agricultural Land Preservation Program  
Mitch Ford, Planning Technician, Agricultural Land Preservation Program  
James Zoller, Howard County Agricultural Sub-Cabinet

Mr. Bauer (Acting Chair) called the meeting to order at 7:05 p.m. and conducted introductions.

### **Action Items**

#### **1) Minutes from the meeting of February 27, 2017**

Mr. Bauer called for the approval of the February 27, 2017 meeting minutes. Mr. Feaga moved to approve. Mr. Day seconded the motion, which passed unanimously.

#### **2) Election of Board Chair and Vice Chair**

The Board conducted an election of a new Chair due to Ms. Moore's departure at the end of her term. Mr. Feaga motioned to nominate Mr. Bauer, which was seconded by Mr. Day. Mr. Feaga then motioned to

nominate Mr. Day to replace Mr. Bauer as Vice Chair, which was seconded by Mr. Patrick. With no other nominations, Mr. Feaga moved for approval of both nominees, which passed unanimously. Mr. Bauer's and Mr. Day's roles became effective immediately.

**2) Request for Approval, Agricultural Subdivision, Fleming property, 13-82-06e, 175.4 acres (APAB)**

Ms. Levy read the staff report stating that the Donald and Shirley Fleming Revocable Trusts are the current owners of the subject property, which was placed in the Maryland Agricultural Land Preservation Foundation (MALPF) program on May 20, 1985 by Donald and Shirley Fleming. The current request is to divide 50 acres from the 175 +/- acre Fleming farm to create a separate parcel to be transferred to the Gentle Giants Draft Horse Rescue (GGDHR) property to the south, to provide them with additional acreage to pasture their horses. The 50 acres to be transferred is in pasture, hay and woods. The GGDHR rescues draft and draft cross horses from slaughter, abuse, and neglect. This proposal would allow the rescue to accommodate the increasing number of animals in need of their care, and would not affect the current Fleming operation of crops for sale and grasslands for hay production.

GGDHR is comprised of two perpetual Howard County environmental preservation parcels that border the Fleming farm to the south and southeast. The proposed agricultural subdivision parcel is located on the south side of the Fleming property affronting the property boundary shared with GGDHR. Under this proposal, the subdivision line runs east and north alongside the Fleming driveway as it traverses the farm, and then continues east, following existing hedgerows, to the edge of a hayfield. To achieve the minimum size of 50 acres, the proposed subdivision line then crosses the hayfield to reach the eastern property boundary. There are no dwellings or structures on the proposed 50-acre parcel to be transferred to GGDHR. There will also be no public vehicular access to GGDHR from the Fleming driveway. After subdivision, the Fleming farm will contain approximately 125 +/- acres, which will continue to be owned and operated by the family.

Ms. Levy called the Board's attention to the standard map set showing the proposed delineation of the subdivision, along with the MALPF Agricultural Subdivision Application Form, and the soils capability class analysis. The analysis showed that both parcels under this proposal sufficiently meet MALPF requirements of at least 50% USDA soil capability classes I, II, & III. The proposed 50-acre subdivided parcel to be transferred to GGDHR has a soils composition of 68.5% classes I, II, & III. The new configuration of the 125-acre Fleming farm has a soils composition of 55.8% classes I, II, & III.

Ms. Levy recommended that the APAB recommends approval to the MALPF Board of Trustees.

Mr. Bauer called for questions and discussion.

Mr. Feaga inquired about principal dwelling rights associated with the proposed subdivided property for GGDHR. Ms. Levy stated that the Fleming family has already conferred with MALPF about their options for transferring a dwelling right, and is planning on postponing that discussion until a later date. Mr. Stephen Fleming agreed, and added that the GGDHR owners are primarily looking for additional pastureland for their horses and are not so concerned about the ability to build a house.

Mr. Feaga stated his concern about having a vacant agricultural property without any dwelling rights. Ms. Jones opined that once they sell the parcel to GGDHR, the Fleming family would not have the option to transfer dwelling rights. She added that this information needs to be specified to prevent confusion down the road.

Ms. Levy responded by stating that MALPF would draft an amended and restated Deed of Easement for the Fleming property, in which the various rights associated with each parcel would be clearly identified.

Mr. Brown moved for approval of the request. Mr. Feaga seconded and amended Mr. Brown's motion to request that MALPF should specify the dwelling rights in the amended and restated Deed of Easement for the new parcel to be purchased by GGDHR. The amended motion passed unanimously.

## **Discussion Items**

### **1) Program Updates**

Ms. Levy announced that the ALPP settled on the Frey and Sachs easements on May 18<sup>th</sup>. She added that the Ziegler Family Trust and the Trust for the Benefit of Thomas Lee Carroll properties in Ellicott City are scheduled for legislative pre-file in June and County Council review in July.

### **2) Commercial Trucking**

Mr. Zoller circulated an analysis he completed focusing on the price differences between Maryland agricultural tags and Maine commercial tags for trucking. Maine commercial tags are often used by farmers for hauling agricultural products, since they are affordable and accessible. Mr. Zoller highlighted the fact that Maryland agricultural tags cost slightly more than the Maine tags over a long period of time, but the annual price difference is minimal. By selecting a Maryland ag tag over the Maine commercial tag, farmers would be in complete compliance with DPZ. The Maryland Motor Vehicle Administration requires that only agricultural products be transported under ag tagged vehicles. Mr. Zoller added that the ag tags would give farmers the same travel distance granted from the Maine tags, and the ability to transport any agricultural product they desire.

Several Board members questioned Mr. Zoller's suggestion of switching to Maryland ag tags due to the added costs, and the apprehension that neighbors would manage to find problems with ag tagged vehicles. Ms. Jones requested that they table this discussion until next month's meeting.

### **3) Natural Wood Waste Recycling Facilities (NWWRFs) and Composting Facilities (CFs) – Zoning Regulation Amendment (ZRA) - 180 (co-sponsored by County Executive Allan H. Kittleman, Councilmembers Mary Kay Sigaty & Greg Fox), and ZRA-160 (submitted by the Dayton Rural Preservation Society)**

Mr. Ford circulated the DPZ Technical Staff Report (TSR) for ZRA-180. Ms. Gowan noted the long and contentious history of the NWWRF (mulching) and composting issues. She stated that after several years of task force meetings, she feels that ZRA-180 represents a very good compromise. Ms. Gowan drew the Board's attention to Appendix C of the TSR (shown below) that details both the current conditions and the effects of ZRAs 160 and 180.

Appendix C - Comparison Chart  
ZRA 160 and ZRA 180

Composting									
	Current			ZRA 160 *			DPZ Recommendation **		
	MDE Permit Not Required	MDE Tier I	MDE Tier II	MDE Permit Not Required	MDE Tier I	MDE Tier II	MDE Permit Not Required	MDE Tier I or Tier II Small Permit	MDE Tier II Large Permit
RC & RR	Accessory to principal use	Conditional Use	Not Permitted	On Farm/For Farm - By Right with restrictions	On Farm/For Farm - By Right - Up to 1 acre or 5%	On Farm/For Farm - By Permit - Up to 3 acres or 5%	Accessory to principal use	By Permit < 3 acres accessory to a farm All Other - Conditional Use - Up to 5 acres or 10 %	Conditional Use - Up to 5 acres or 10 %
ALPP	Accessory to principal	Not Permitted	Not Permitted	On Farm/For Farm - By Right - with restrictions	On Farm/For Farm - By Right - Up to 1 acre or 5%	On Farm/For Farm - By Permit - Up to 3 acres or 5%	Accessory to principal use	By Permit < 3 acres accessory to a farm	Not Permitted
M-1	Accessory to principal	Conditional Use	Not Permitted	Not addressed	Conditional Use	Conditional Use	Accessory to principal use	By-Right	Conditional Use
M-2	Accessory to principal	Not Permitted	Not Permitted	Not addressed	Conditional Use	Conditional Use	Accessory to principal use	By-Right	By-Right
SW	Accessory to principal	By-Right	Not Permitted	Not addressed	Not Permitted	Not Permitted	Accessory to principal use	By-Right	By-Right
R-20, R-12, R-5C, R-5A-8	Accessory to principal	Not Permitted	Not Permitted	Limited composting-By-Right with restrictions	Not Permitted	Not Permitted	Accessory to principal use	Not permitted	Not permitted

Natural Wood Waste Recycling						
	Current		ZRA 160		DPZ Recommendation	
	MDE Permit Not Required	MDE Permit Required	MDE Permit Not Required	MDE Permit Required	MDE Permit Not Required	MDE Permit Required
RC & RR	Accessory to a principal Farm	Conditional Use	On Farm/For Farm - By Right - Up to 1 acre or 5%	Not Permitted	Accessory to a principal Farm	Conditional Use - Up to 5 acres or 10 %
ALPP	Accessory to a principal Farm	Not Permitted	On Farm/For Farm - By Right - Up to 1 acre or 5%	Not Permitted	Accessory to a principal Farm	Not permitted unless accessory to a principal Tree Farming Use Only (Conditional Use) - Up to 2 acres or 15% of area actively farmed
M-1	By-Right	By-Right	Not addressed	Conditional Use	By-Right	By-Right
M-2	By-Right	By-Right	Not addressed	Conditional Use	By-Right	By-Right

Figure 1: Appendix C – Comparison Chart from the DPZ Technical Staff Report for ZRA-180.

Ms. Gowan explained that under ZRA-180, mulching and composting would follow the classification and permitting structure of the Maryland Department of the Environment (MDE). Mulch and/or composting operations on farms that do not require an MDE permit are considered accessory to the principle farming operation. MDE classifies waste material as either Natural Wood Waste (e.g. stumps, logs), or Type 1 and 2 Feedstocks (composting materials). Type 1 is considered general yard waste (e.g. leaves, grass), and Type 2 consists of food scraps, non-recyclable paper, animal manure and bedding, industrial food processing materials, animal mortalities, and compostable products.

### Composting Facilities (CFs)

ZRA-180 proposes that if MDE determines that the scale of a CF is such that it requires a Tier I or Tier II Small Permit, then it could be permitted through a Special Farm Permit if it is less than three acres. And accessory to the principal use of the farm. In this case, a permit similar to the one given for other farm related uses (such as agritourism or pick-your-own) would be issued. Ms. Gowan highlighted Appendix A of ZRA-180 that details exemptions for on-farm and non-farm composting, which would be exempt from an MDE permit and therefore permitted locally as accessory uses.

If a non-ALPP farm operation in the Rural Residential (RR) or Rural Conservation (RC) Zoning Districts requires a MDE Tier I or Tier II Small Permit, but is greater than 3 acres or not considered accessory, ZRA-180 proposes that it be allowed by Conditional Use (CU), up to a maximum of 5 acres or 10% of the property. ALPP properties are not eligible for an MDE Tier II Large Permit for CFs. Ms. Gowan explained that after consulting with County Environmental Services, DPZ found that the costs, size, and intensity of a Tier II -large Composting Facility would not be within the range of most operations. Mr. Feaga and Mr. Bauer commented that the ZRA excluded properties in the ALPP from fully participating in this type of operation, compared to non-preserved farms. Mr. Bauer added that the County previously granted a CU for mulching and then took away that option away from farmers.

Councilmember Sigaty responded to Mr. Bauer's concerns by stating that the Zoning Regulations do not have any existing language that supported diversified composting beyond yard waste. Ms. Sigaty added that ZRA-180 is a middle-of-the-road approach and is still a work in progress. Both Ms. Sigaty and Ms. Gowan encouraged the Board members to provide input to the Planning Board and the County Council.

Ms. Sigaty asked that they pay particular attention to the setbacks outlined for the NWWRFs and CFs, noting that the proposed setbacks for both facilities are less than current regulations.

Mr. Feaga commended Ms. Gowan and Ms. Sigaty for their dedication to resolve the issue, and explained that his concern is the disparity between permitted uses on preserved farms versus non-preserved farms. He noted that farms in the ALPP merely sold their development rights and should be treated with fairness. Ms. Jones praised the MDE Tier approach, since it simplified and streamlined the entire process and aligned it with state regulations.

Ms. Sigaty expressed that she does not want this proposal to impede anyone's farming business, and she encouraged the Board to share the ZRA with members of the community. She noted that she aspires to have a good product that is workable for everyone involved throughout the county.

### ***Natural Wood Waste Recycling Facilities***

Ms. Gowan presented the Natural Wood Waste Recycling (mulching) component of ZRA-180, by stating that it would be treated in a similar fashion to composting. For both the ALPP and non-ALPP RR and RC properties, if an operation is mulching on-farm/for-farm, the activity would be exempt from MDE permitting and would be considered accessory to the farming use. If an operation wishes to sell the mulching product, then an MDE permit would be required. This type of transaction would only be permitted on ALPP properties as an accessory to a principal tree farming use, and would require conditional use approval for a maximum of up to (the lessor of) 2 acres, 2% of the easement or 15% of the area being actively farmed. Reasons for this farming area size stem from the need to reserve higher intensity mulching for major tree farms in the county. RC and RR properties that are not in Ag Pres would be able to do mulching operations with an MDE Permit only through a CU on up to 5 acres or 10% of the property. Another component from the Mulch Task Force meetings was fire code regulations for mulch piles. While fire related regulations were not included in the ZRA, they were included in the recent fire code update. Ms. Sigaty explained that mulch piles must be less than 18 feet in height. This height limitation is required to promote public safety and prevent the spread of fire.

Mr. Bauer asked if the exchange of wood waste for mulching between farmers would be allowed under these conditions. Ms. Gowan confirmed that this would be permitted, and that DPZ understands the need for these types of inter-farm exchanges. Ms. Sigaty added that the wood waste material from residential neighbors could also be mulched by farmers.

Mr. Feaga recommended that the emergency provision of ZRA-180 should provide more flexibility in the case of a natural disaster. He contemplated proposing changes that would include the possibility of emergency scenarios, like the 2016 tornado. During the weeks following the tornado, the need to grind trees, stumps, and wood waste debris in the west was high. Overall, he believed that the permitting process for this type of emergency should be as simple as possible.

Ms. Gowan stated that if MDE did not require a permit for an emergency facility, then the County would not either. If MDE does require a permit for this type of activity, then a special farm permit could be obtained relatively quickly from DPZ to begin emergency mulching.

Mr. Feaga and Mr. Brown both expressed concern for the added delay caused by work week limitations in the case of a weekend disaster event.

### **Motion to Give Public Testimony on Behalf of the ALPB to Endorse ZRA-180**

The Board agreed to develop public testimony in favor of ZRA-180. Ms. Jones motioned for a representative of the ALPB to present the testimony at the May 25<sup>th</sup> Planning Board meeting in support of ZRA-180 by generally stating:

*We, the Agricultural Land Preservation Board, endorse the conditions contained in ZRA-180 and do not recommend ZRA-160. The ALPB is in favor of regulations for operations which are essential to agricultural operations in Howard County, and find ZRA-180 goes a long way in addressing the needs for Natural Wood Waste Recycling Facilities and Composting Facilities. In conducting composting and mulching, we recognize that farms may take in stock and farms may sell stock, and that this is considered normal activity for a farm. Furthermore, the ALPB supports the need for these types of facilities in the case of emergencies caused from natural disasters.*

Mr. Feaga seconded the motion, and it passed unanimously.

### **3) ALPP Reference Binder Update**

Mr. Ford circulated and presented the ALPP Reference Binder Update packet containing new information for the Board. The update included the 2018 ALPB Meeting Schedule, 2017 ALPB Roster, 2016 ALPB Agendas, and new code language for Subtitle 5 (Ag Act), Section 12.111 (Right to Farm), Section 104 (RC Zone), Section 105 (RR Zone), and Section 106.1 (County Preservation Easements). The update also had new policies and code information related to commercial solar facilities, animal shelter setbacks, MALPF approval for uses, MALPF uses guidelines, and MALPF termination of easement.

Mr. Brown moved to adjourn the meeting, which was seconded by Ms. Jones and carried unanimously. The meeting adjourned at 9:23 p.m.

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Joy Levy, Executive Secretary  
Agricultural Land Preservation Board